

C.S.V. OIL EXPLORATION COMPANY  
AND  
CALVINCO OIL AND GAS

IBLA 71-244

Decided February 27, 1973

Appeal from the decision of the Utah State Office, Bureau of Land Management, rejecting the only bids for competitive oil and gas leases. Utah 13668 parcels 1, 3, 4, 13 and 14.

Reversed and remanded.

Oil and Gas Leases: Competitive Leases

Where lands included in a known geologic structure of a producing oil and gas field have been offered for competitive leasing several times in the past with negative results, and where the probability of finding commercial accumulations of oil or gas has been almost negated by unsuccessful efforts on surrounding lands, and where the Department's own analysis indicates the lands have no more than nominal value for oil and gas, it is error to reject the only bonus bids because they were less than \$ 1 per acre when that figure is not established as the minimum acceptable bid by law or regulation, and was not specified as the minimum in the notice of sale, but was later imposed purportedly as a matter of custom.

APPEARANCES: Jan E. Callister, Vice President, Calvinco; Paul S. Callister, President, C.S.V. Oil Exploration Company, pro se.

OPINION BY MR. STUEBING

C.S.V. Oil Exploration Company and Calvinco have appealed from a decision of the Bureau of Land Management, Utah State Office, dated February 17, 1971, rejecting as inadequate the only bids made for Parcels 1, 3, 4, 13 and 14 offered for competitive oil and gas leasing in the known geologic structure of Bar X, San Arroyo, and Westwater fields in Grand County, Utah. The per acre bonus offered by C.S.V. Oil Exploration Company and Calvinco was \$.57 for Parcel 1, \$.55 for Parcel No. 2, \$.27 for Parcel No. 3, \$.25 for Parcel No. 4, \$.52 for Parcel No. 13 and \$.51 for Parcel No. 14. The decision by the Utah State Office determined that these bids were inadequate, stating:

By careful evaluation of the oil and gas potential of the lands offered, considering all factors involved, it has been determined that the acceptance of these bonus bids would not return a fair market value and would not be in the public interest. The offering of these lands was made subject to the reservation of the right of the United States to reject any and all bids, as provided by 43 CFR 3124.4. (Now 43 CFR 3120.3-1 (1972))

In response to an inquiry by the Board of Land Appeals, concerning exactly what factors were considered in this decision, the State Director, Utah State Office, sent several items of correspondence and reports concerning the leases in question. Reasons for acceptance of the bonus bids in question were detailed in a memorandum from J. R. Klem, Mining Engineer, to the Chief, Adjudication Branch, dated February 10, 1971, in which it was stated:

From a careful review of all factual data (geologic conditions, producing horizons, individual wells, field production records, etc.) it was concluded that none of the tracts could be considered to have more than nominal value. \* \* \*

The bids on tracts 1, 3, 4, 13, and 14 were noticeably low. However, technical information relative to the individual tracts supports the conclusion that these tracts have little to no bid value. In addition, these tracts have been offered several times in the past with negative response.

In these fields it is questionable whether even the best potential well targets will pay out, and where the conditions are such that the probability of finding commercial accumulations of oil and gas are almost negated by surrounding well information, pay out on any well drilled would be, at the least, extremely speculative. \* \* \*

I recommend that all high bids on the eight tracts be accepted.

The above-quoted memo was transmitted by another memo written by Klem's supervisor, which stated:

I cannot concur with Klem. Historically the minimum bid has been \$1/acre and I can't see under the present circumstances accepting any bid lower than that.

In a memorandum from the State Director, Utah, to the Director, BLM, the only basis for rejecting these bids was set out thus:

\* \* \* A pre-sale evaluation in accordance with Information Memo No. 69-140, was made on the morning of January 27, 1971. From a review of all social and economic factors it was concluded that none of the tracts could be considered to have more than a nominal value. \* \* \*

A post-sale evaluation was held on the bids immediately after the sale on January 27, 1971. Technical information relative to the individual tracts supports the conclusion that they have minimal productive potential. This conclusion led to the determination that these tracts would be of nominal value. Although the term "nominal" has not been precisely defined we had consistently held that it is in the range from \$1 to \$5 but certainly never less than \$1. In a previous sale for lands in the Last Chance Field the bid was for \$.60/acre for the tract involved. The bid was rejected. However, in this case, no appeal was filed. The land was re-offered and this time the bid was for \$1.10 per acre. This bid was accepted.

In their statement of reasons appellants note that in 1967 they received an oil and gas lease covering the same land now offered as Parcel No. 2 on a bonus bid of 57 cents per acre. At the same sale, appellants allege, another offeror obtained a lease in adjacent section 13 on a bonus bid of 55 cents per acre. Assuming the truth of these allegations, we are obliged to conclude either that that "long established" policy of accepting no less than one dollar per acre had its inception after that date or that it has not been applied inflexibly in the past leasing of lands in the same field. It also reflects doubt on the accuracy of the State Director's statement that nominal value has "consistently" been held to a range of from \$1 to \$5 "but certainly never less than \$1."

The notice of the lease sale did not specify a minimum bid and we can find no basis in the law, the regulations, or in Department policy for the \$ 1 per acre minimum bid requirement which was the sole apparent basis for rejecting the appellants' bids. The land had been offered for lease several times before and no bids were submitted. Geological information indicates that commercial production from these lands is extremely speculative. This points up the very doubtful prospects for finding oil on these parcels. We conclude that the imposition of a one dollar per acre minimum, fixed only by dubious custom, is unwarranted in this instance. A

decision involving the exercise of administrative discretion, which is not supportable on any rational basis cannot stand. Cf. United States v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109, 113 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for further action consistent with this opinion.

Edward W. Stuebing, Member

I concur:

Frederick Fishman, Member.

I dissent:

Joseph W. Goss, Member

## DISSENTING OPINION BY MR. GOSS

I would affirm the decision of the Utah State Office. The majority opinion states that the basis for the rejection of appellants' five bids with bonus ranging from \$ .25 per acre to \$ .57 per acre is the custom of not accepting a bonus of less than \$ 1 per acre. The opinion concludes with the inference that the \$ 1 minimum herein is not supportable on any rational basis.

The bid invitation provided that the Government reserved the right to reject any and all bids and that a bonus bid would be rejected if it were considered inadequate on the basis of the estimated value of the parcel. <sup>1/</sup> This is consistent with Departmental Regulation 43 CFR 3120.3-1 which states that " \* \* the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful bidder."

The Secretary's regulation thus commits to the initial discretion of his delegate the rejection of bids. In determining whether a bid should be rejected or accepted, it is sufficient that the determination to reject the bid is supported by the record. Howell Spear, 8 IBLA 93 (1972); Antoine "Fats" Domino, 7 IBLA 375 (1972); Humble Oil and Refining Co., A-30906 (December 5, 1967). The Board has reversed the action of a manager in rejecting a high bid for reason of inadequacy where the same parameters were not applied to all the bids. Tipperary Land & Exploration Corporation, 7 IBLA 270, 275 (1972). See also Kerr McGee Corporation, et al., 6 IBLA 108 (1972); Humble Oil and Refining Company, 4 IBLA 72 (1971).

A sufficient reason for rejecting a bid is the belief [of the Secretary's delegate] that the Government might receive a better price in the future; this would appear to be one of the reasons why the right to reject all bids is reserved. C. C. Thomas, A-27380 (November 7, 1956); see also Ferry v. Udall, 336 F. 2d 706, 711 (9th Cir. 1964), cert. den., 381 U.S. 904 (1965).

The question herein is whether there is a sound basis for the discretionary action of the State Office in establishing \$ 1 per acre as the minimum. Harold E. and Alice L. Trowbridge, A-30954 (January 17, 1969).

The matter of the bonus amount which can be expected in a future bid is highly conjectural. The Utah State Office decision cited as a reason for rejection that the bonus bids did not return the fair market value and would not be in the public interest. It

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<sup>1/</sup> The estimated bonus value of the parcels herein was "nominal". A bonus of \$1 per acre may be considered as a nominal amount.

is probable that more specific reasons exist for the \$1 minimum -- for example, administrative convenience may make it desirable to establish standards to be followed by the delegate; the land is in a known geologic structure of oil production; a requirement of a reasonable minimum bonus may tend to encourage higher bids; and the minimum bonus may offset the administrative expense of processing high risk leases and appeals in connection therewith. There is, of course, a higher probability of abandonment of a lease (with a cessation of rental payments and no royalty payments) in areas where expectations of oil are marginal at the time the lease is signed.

While the lands herein concerned are located in a known geologic structure, the record does not specify whether the structure is faulted to the extent that valuable pools may exist in close proximity to areas where there has been unproductive exploration. However, the experience of the State Office as set forth in the record, can be construed to support the application of the \$1.00 minimum in the area under consideration. In 1967, C.S.V. Oil Exploration Company bid a bonus of \$.57/acre for the N 1/2 N 1/2 sec. 14, T. 17 S., R. 25 E., S.L.M. That bid was accepted and a lease issued. In 1971 when the parcels herein involved were offered for competitive leasing, the N 1/2 N 1/2 sec. 14 was again offered. The C.S.V. Oil Exploration Co. bid of \$.55 per acre was topped by a \$7.67 bid received from A. Lansdale.

The \$1 minimum invoked as the parameter in this and other cases was a determination made by the authorized officer pursuant to 43 CFR 3120.3-1. The fact that the Utah State Office has frequently invoked a \$1 minimum is known to the Office of the Secretary. The \$1 minimum is not arbitrary or capricious. Although the Board of Land Appeals reviews such policy determinations, due consideration should be given to the discretionary judgments of those offices which have been delegated primary technical responsibility by the Secretary. A decision of a Secretary's delegate should not ordinarily be reversed on the basis of conjecture. I submit that the rejection herein is sufficiently supported by the record.

